



LEGAL POLICY ON HUMAN TRAFFICKING CRIMES

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Abstract

The crime of human trafficking still become problem in people's lives. Human trafficking undertaken includes the process of hiring up to the act of buying and selling people. The existence of Law Number 21 of 2007 concerning the Eradication of Crime of Human Trafficking as protection for trade acts. The legal policy in the realm of human trafficking is not only about central government elements but also related to the policies issued by the local government. The law as an existing regulatory instrument in Indonesia is based on the existence of regional policy to protect its citizens. Trafficking cannot be separated from various parties. This concerns various aspects of the community elements involved in it. There is a need for comprehensive prevention to avoid trafficking. In this case both the office and the law enforcers must play a role in the prosecution and protection of trafficking.

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INTRODUCTION

Human trafficking is growing very fast with technological advancements that help communicate between parties. Indonesia as one of the countries with a high population in the world allows the occurrence of criminal acts of people easier to do. The territory of Indonesia which has an area of about 1,990,250 km, with 17,504 islands and 1,304 ethnic groups, with 546 dialectics of different languages, becomes an opportunity for trafficking in persons.

Historically, human trafficking can be said as slavery and also violated human rights. This condition develops in economic communities that have weak economic levels, lack of understanding of religion or morality, and depend on strong economic groups. The reasons given by victims are generally their actions are legal on the basis of an agreement. Human rights violations in the form of slavery are generally in the form of deprivation of freedom from someone, which is carried out by powerful economic groups to weak economic groups. Therefore, on the basis of prevention of human trafficking in the perspective of human rights violations

must be carried out comprehensively and integrally, which can be done through the level of criminal law policy by means of legislation, execution, and judicial (Farhana, 2010: 198).

Human trafficking is a form of crime that has a low risk but the profitability is large. The very systematic nature of the crime and the sophisticated mechanisms used are combined with the fact that there are still many countries that do not have laws or regulations as an instrument to eradicate this crime. Even so, even if there is still weak law enforcement, so many cases occur where traffickers are released easily while the victims are treated as criminals (Hidayati, 2012: 165).

The current issue of human trafficking has become a concern for the international community. This is because a number of violations of human rights (and henceforth abbreviated to human rights) are considered as causes and at the same time a result of human trafficking. Such human rights violations include forced labor, sexual and labor exploitation, violence, and abuse of victims. Cunning traffickers have exploited poverty, manipulated the hopes and innocence of

their victims by using threats, intimidation and violence to make victims undergo servitude forced, to undergo, undergo debt bondage, and forced or fake marriage, to be involved in forced prostitution or to work under conditions comparable to slavery to benefit the merchant. Victims are no longer treated like humans, but rather as slaves who are forced to produce cheap goods or provide continuous service. They live in fear, and many also end up being victims of violence (Hidayati, 2012: 165).

Human trafficking may be a common or common thing to hear because the incidence of human trafficking is undeniable in Indonesia. Human trafficking is a form of cruel crime that violates human dignity, and is a violation of human rights, the most concrete which often preys on those who are economically, socially, politically, culturally and biologically weak.

The criminal acts of human trafficking, especially women and children, have expanded in the form of criminal networks, both organized and unorganized. Crime of trafficking in persons even involves not only individuals but also corporations and state administrators who abuse their authority

and power. The network of perpetrators of criminal trafficking in persons has an operational range not only between regions within the country but also between countries.

UU no. 21 of 2007 is aimed at eradicating human trafficking, among others, through efforts to prevent, protect, prosecute and integrate the community, with the hope that the community can be protected. With the rampant cases of human trafficking including those that cannot be dealt with further, trade prevention efforts based on Law No. 21 of 2007 became very significant, especially in terms of national defense against safety from the threat of human trafficking. Prevention of trafficking in persons needs to be done because it can also include trafficking in narcotics and criminal acts of terrorism. This paper will discuss the penal policy on human trafficking and the safeguards made to prevent criminal acts of human trafficking.

RESEARCH METHOD

This paper used normative approach method, with comparing some cases related to human trafficking, report on human trafficking, as well as

comparing some laws and regulations concerning to this topic.

FINDING AND DISCUSSION

In Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 point 1 provides an understanding of human trafficking is the act of recruiting, transporting, sending, transferring or receiving someone with the threat of violence, use of violence, abduction, confinement, falsification, fraud and abuse of vulnerable power or position, entrapment of money or providing payments or benefits, so as to obtain approval from the person holding control over the other person, both within the State and between States for the purpose of exploitation or causing an exploited person.

THE SCOPE OF HUMAN TRAFFICKING CRIMES

Forms of human trafficking include: first, Migrant Workers are people who migrate from the area of their birth to another place and then work in the new

place in a relatively settled period, *Second*, Child Labor (both in the form of actions and attempted actions). *Third*, the crime of prostitution that is legally defined as the sale of sexual services which includes sexual acts is not as big as copulation and sexual relations, *Fourth*, Child Trafficking through Adoption (Appointment of Children), and *Fifth*, slavery under the guise of marriage and bride orders, six, implantation of organs.

According to Wahyu Riadi on his Thesis, "Implementation of Human Trafficking Prevention in the Perspective of Defense System", that there are so many issues related to human trafficking that dragged various countries. According to the US Department of State (2010) the United Nations Institute (UN) estimates that 2.5 million people worldwide have been trafficked and become victims of human trafficking. The United Nations International Labor Organization (ILO) reports that there are 215 million children trapped in hazardous work that puts them at risk of injury, illness or death, and are vulnerable to becoming victims of trafficking. According to Larsen (2010), Indonesia is a country in the Asian region that has a big problem with the many practices of human trafficking. Trafficking

in persons or trafficking in persons is a crime that violates human rights and threatens the security and safety of citizens, especially prospective migrants who will go abroad, until the publication of Law No. 21 of 2007

UU no. 21 of 2007 aimed at eradicating human trade, among others, through efforts to prevent, protect, prosecute and integrate the community, with the expectations of the people in 1990. According to U.S. TIP Report (as quoted in Murray V. Dingman S & Porter J. (2015), emphasized that human trafficking is an act of exploiting sex and employment of vulnerable people using coercion, fraud and violence. While the 2000 UN Protocol as quoted by Nuryani (2012) Human Trafficking is the recruitment, sending, transfer, shelter, or acceptance of someone, or someone's acceptance, with threats, or use of power, or other forms of coercion, kidnapping, fraud, fraud, abuse of power or vulnerable positions, or giving or receive payments or benefits to obtain permission from people who have authority over others, for the purpose of exploitation.

According to Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons Article 1 paragraph (1),

trafficking in persons is the act of recruiting, transporting, accommodating, sending, transferring or receiving someone with the threat of violence, use of violence, kidnapping, confinement, fraud, abuse of power or vulnerable position, debt bondage or giving payments or benefits, so that obtains approval from people who have control over others, whether done within the State or between countries, for the purpose of exploitation or causing people to be exploited.

In the concept of national defense according to Law No. 03 of 2002 concerning national defense, article 1 paragraph (1) states that national defense is all efforts to defend the sovereignty of the country, the integrity of the Republic of Indonesia, and the safety of all nations from threats and disruptions to the integrity of the nation and state. Article 1 paragraph (2) states that the National Defense System is a universal defense system that involves all citizens, territories, other national resources, and is prepared early by the government and held in a total, integrated, directed, and continuing manner to uphold sovereignty Country, territorial integrity, and the safety of all nations from all threats.

National Defense in Article 6 is organized through efforts to build and foster the capabilities, deterrence of the State and nation, and repeating every threat. The state defense system Article 7ayat 3 states that in the face of non-military threats placing government institutions outside the defense sector as the main element, in accordance with the form and nature of the threats faced with the support of other elements of national power. State defense affairs in facing various threats are not only TNI matters but also the affairs of government institutions outside the defense sector. The TNI deals with the threat of the military and other government institutions dealing with non-military threats.

Under the regulation of the Minister of Defense No. 57 of 2014 concerning Strategic Guidelines for Non-Military Defense, it is stated that human trafficking or trafficking in persons is one form of non-military threat. This human trafficking is a threat to the safety of all nations. According to Soekamto (2008) that the effectiveness of the law depends on the facilities and resources in this matter, village officials and channels that can be utilized for socialization media about human trafficking. In implementing

law enforcement it is still far from expectations. This can be seen from the police data which shows the handling of cases of trafficking in persons in the field of the case itself.

Meanwhile, law enforcement against persons is almost never heard of. The quality of law enforcement is very insignificant where there are no sanctions against traffickers who have made victims to death, who should have been sentenced to more than 15 or 20 years and with more than 2 billion, but rather the light punishment imposed, on average 3 - The hardest 4 years is only 8 years. So far, law enforcement is very concerned it does not provide a deterrent effect for the perpetrators. Even if you see sanctions in Law No. 21 of 2007, both criminal sanctions and fines and quite comprehensive which regulate sanctions against individuals, supporting parties etc, are quite heavy and are expected to be able to provide a deterrent effect for the occurrence of criminal acts of trafficking in persons.

As stated by Van Hamel, criminal executions can cause other parties to think of committing a crime. But on the contrary if the execution of the punishment is not achieved even though the threat that is

written is quite heavy, it will still not deter because the implementation of law enforcement in the field is different. Some of the causes of weak law enforcement, such as the lack of perpetrators who are subject to punishment and the lightness of sentences, are among others caused by: lack of information from victims; the offender is outside the country; the victim withdraws the claim because of pressure or training from both personal and corporate/PPTKIS; and the intervention of individuals who play. Whereas the causes of sentencing are not maximal because the articles / provisions imposed are not laws on trafficking in persons but other laws such as the Criminal Code or Employment. This is caused, *inter alia*: differences in perceptions between law enforcement officers, prosecutors, judges; lack of understanding regarding the Act on trafficking in persons from some of the law enforcement itself; and the presence of individuals involved (Riadi, 2017: 13).

According to Maslihati Nur Hidayat in his journal entitled *Efforts to Eradicate and Prevent Trafficking in Persons through International Law and Positive Indonesian Law*, the issue of human trafficking now has become a concern for the international community. This is

because a number of violations of Human Rights (and henceforth abbreviated to HAM) are considered as causes and at the same time the consequences of human trafficking. Such human rights violations include post-employment, exploitation, sexual and workplace violence, violence, and abuse of victims. Cunning traffickers have exploited poverty, manipulated the hopes and innocence of their victims by using threats, intimidation and violence to make victims undergo slavery forced to undergo peonage, undergo debt bondage, and forced or fake marriage, involved in forced prostitution or to work under conditions comparable to slavery to benefit the merchant. Victims are no longer treated like humans, but rather as slaves who are forced to produce cheap goods or provide continuous service. They live in fear, and many also become victims of violence.

COUNTRY AND GENDER IN HUMAN TRAFFICKING

These human rights-based concerns also need to be gender-inclusive concerns. Gender is considered a determining factor in trade, both from inventory and demand. Women and girls are far more likely to be

victims of trafficking compared to men or boys. Especially if talking about human trafficking is intended for prostitution and other forms of sexual exploitation, and also in the exploitation of domestic work which is more similar to the practice of slavery in the modern era.

Trafficking in persons is a serious manifestation of the process of feminizing poverty and the greater challenges faced by women and girls in the world characterized by gender discrimination, both inside and outside the employment market. The main problem of trade in women and girls is the inferior status of women, cultural prejudices that are deeply entrenched that prevent women from realizing their potential. And this is compounded by the failure of the State to guarantee women's rights.

In countries where large numbers of women and girls are trafficked, people find similar sketches of women's helplessness. Other concerns are the vulnerability of victims, especially women and girls, to HIV / AIDS as well as issues of HIV / AIDS transmission, other reproductive and sexual health compared to commercial sex workers because of the nature and situation of those who are confined and controlled and their

vulnerability to treatment arbitrary including cruel rape.

FACTORS UNDERLYING THE OCCURRENCE OF HUMAN TRAFFICKING

There are many factors that cause human trafficking. Most cases are caused by poverty. Poverty is the most important cause of vulnerability and helplessness. In addition to poverty, the problematic family situation is also a factor in the occurrence of human trafficking. Another reason is the lack of opportunities to obtain education and access to information. The facts show that there is a strong correlation between the trade of people with low levels of education, insufficient training and lack of opportunities to obtain education. Other contributing factors are the economic crisis, natural disasters, war and political conflict. Sudden political changes, economic collapse, civil society unrest, armed conflict within the country and natural disasters greatly increase the likelihood of a country becoming a source of victims of trafficking in persons. Such disasters cause instability and mobilization of citizens, and result in economic and social insecurity. This can encourage

women and girls to flee for other possible choices and in the process can put themselves in the hands of traffickers.

The State and Government are tasked with carrying out the protection, respect and fulfillment of human rights and so that the principles in the Universal Declaration of Human Rights which have a legally binding power, it is necessary to form an international agreement on human rights. Especially for trafficking in persons, the international community has a UN Protocol to prevent, prosecute and punish trafficking in persons, especially women and children (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) formulated in 2000 or also known as the Palermo Protocol. This protocol is complementary to the United Nations Convention Against Transnational Organized Crime (United Nations Convention against Transnational Organized Crime). The protocol came into force on 25 December 2003 and was designed to strengthen and enhance international cooperation to prevent and combat trafficking in persons.

International Organization for Migration (IOM) since 2005 has identified and assisted victims of trafficking in

persons in 3,339 people. Where nearly 90% of victims were women, and more than 25% were children. Of course, the data does not describe the actual number of trafficking cases but only reported. On March 5, 2009, the Government of Indonesia Ratified and promulgated the Palermo Protocol through Law No. 14 of 2009, with the Declaration (statement) of article 5 paragraph (2) letter c and Reservation (Requirement) of Article 15 paragraph (2). Whereas since January 12, 2009, Law No. 5 of 2009 concerning Ratification of the United Nations Convention on Transnational Organized Crime (UN Convention against Transnational Organized Crime). And on March 16, 2009, Indonesia enacted Law No. 15 of 2009 concerning Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. The Palermo Protocol encourages every participating State in this convention to establish legislative steps and other measures that are necessary to prevent, act on and punish trafficking in persons, especially women and children. In Indonesia, before ratifying the Palermo

Protocol, since 19 April 2007, Indonesia has enacted Law No. 21 of 2007 concerning Eradication of the Criminal Procedure for Trafficking in Persons (PTPPO Law) (Hidayati, 2012: 163).

Daniel Andreo in his thesis entitled *Juridical Analysis of Criminal Responsibility for the perpetrators of the trial of Criminal Trafficking in Persons under Law No. 21 of 2007* (Decision of the Medan District Court No. 1.642 / Pid.B / 2009 / PN.Medan). The concept of criminal liability in criminal law legislation in the Criminal Code does not stipulate the meaning of responsible ability. In article 44 of the Criminal Code raises several opinions of legal scholars, Moeljanto concluded that for the ability to be responsible there must be: first, the ability to discriminate between good and bad deeds; in accordance with the law and that is against the law. Second, the ability to determine his will according to his understanding of the good and bad deeds as a consequence. In the penal code (Criminal Wetboek) in 1809, it was stated: "intentionally is the willingness to do or not commit acts that are prohibited or ordered by law. In the *Memorie Van Toelichting* (MVT) minister of justice during the submission of the *Criminiel*

Wetboek in 1881 (which became the Indonesian Criminal Code in 1915), it was explained: "deliberately interpreted:" Consciously from the will to commit a certain crime ".

Crime of trafficking in persons according to law No. 21 of 2007 article 1 paragraph (1) of the PTPPO Law reads: trafficking in persons is the act of recruiting, transporting, sheltering, transferring, or receiving someone with the threat of violence, use of violence, abduction, confinement, fraud, abuse of power or vulnerable positions , debt entrapment or provide payments or benefits so as to obtain approval from the person who controls the other person, whether done within the State or between States, for the purpose of Exploitation.

Trafficking in persons is a modern form of human slavery which is one of the worst forms of violation of human dignity. With the advancement of technology, communication and transportation also helped progress and the increasingly sophisticated equipment and mode of operation to be closed and only known to certain groups. The role of criminal law is not only as a means of regulating public order (social order) in the framework of creating social policy (social defense), both

preventive and comprehensive funds, the judge's decision will be in accordance with the objectives of criminal law policy, namely public welfare.

According to Sanofta D.J Ginting in his journal entitled Criminal Law Policy in tackling criminal trafficking in persons (Human Trafficking). Law enforcement in Indonesia itself does not always run smoothly there are several factors that influence it, including their own legal factors, law enforcement factors, facilities or facilities, community factors, and cultural factors. Legal reform has a very strong relationship with politics, therefore the deliberation of criminal law in dealing with criminal acts of trafficking in persons in the manufacturing process until institutionalization is carried out by political institutions, which are institutions that have power in society.

The process of forming a law is carried out through a formulation/ legislative policy, while the law enforcement or institutionalization process is carried out through application/ judicial policies and criminal proceedings carried out with execution/ administration policies. There are 3 stages in preventing the crime of trafficking in persons, namely: the policy of Formulation / Legislation or

the process of making laws and regulations carried out by law makers (the government together with the House of Representatives), the application/ judicial policy or the stage of the application of criminal law law enforcement officers starting from the police, prosecutors and courts. This stage is called judiciary, and the Execution / Administration policy or legal policy is in the stage of implementing criminal law concretely by the apparatus of the criminal apparatus, and this stage is called the administrative stage.

The effectiveness of law enforcement on eradicating trafficking in persons in the city of Makassar (the effectiveness of law enforcement in human trafficking in Makassar) according to Saifullah, Muhadar, Slamet Sampurno Soewondo based on the results of research conducted stated that: the police tend to view criminal trafficking in persons this is a rule violation. This is wrong because the criminal act of trading is a common or ordinary offense. Anyone can report or complain about the alleged crime of trafficking in persons to law enforcement or the authorities. Constraints faced by police investigators in overcoming the crime of trafficking in persons are not yet well-socialized with laws and regulations

as well as policies regarding trafficking in persons, the lack of equality in terms of the provisions stipulated in applicable laws, and understanding handling that is not same with the prosecutor, resulting in a file back and forth.

The Demands Given by the Public Prosecutor Regarding the Prisoner's Term of Crime Nearly Their Inclinations Tend to Implement the Minimum Limits of statutory provisions, as well as the magnitude of criminal penalties which tend to apply minimal limits. In dealing with trafficking cases there are often obstacles such as the presence of victim witnesses in court, criminal charges against defendants, and too long bureaucracy from the number of cases handled by law enforcement officials, in recent years there has been a decrease in the number of cases to the trial examination stage compared to the previous year. This shows an increase in public awareness in the eradication of criminal acts of trafficking in persons, but this tendency could be due to the more fragile workings of the perpetrators of the crime of trafficking in persons (Saifullah *et al.* 2016: 6).

INDICATORS OF CAUSES AND CONSEQUENCES FOR VICTIMS

In general, the factors that cause TPPO (criminogen factors) are:

1. Internal factors

In general the occurrence of trafficking in persons is due to the condition and quality of human beings (especially victims), which is generally a driver for the growth and development of trafficking in persons.

- a. The desire to find work experience
- b. There is a temptation to get a high salary
- c. Low education level
- d. Feeling bored to live in the area of origin
- e. The existence of acts of domestic violence

2. External Factors

This factor comes from outside the victim, namely:

- a. Community culture is the absence of gender equality
- b. Weak legal system that has not supported law enforcement against TPPO
- c. Regional conditions (Nuraeny, 2013: 290).

Indicators of women's trafficking in the Indicators according to the Global Alliance against Traffic on Women report (GAATW), there are three (3) aspects in human trafficking, namely:

1. The rise of transfers from one place to another, both within and outside the country which is not the desire or free choice of the woman concerned, but because of forced or pressure situations in the form of poverty and unemployment, resulting in a strong desire to improve fate;
2. The increasing number of labor supply companies, especially those that are illegal, because the profits obtained by recruiters, sellers, and corporate syndicates are allegedly very large;
3. The high number of fraud cases, including in the form of false promises, bonds of debt, slavery, coercion, pressure and extortion.

In Indonesia, laws specifically regulating human trafficking have been established, namely Law No. 21 of 2007 concerning Eradication of Crime in Human Trafficking, so that legal protection against trafficking victims can be specifically protected. Thus the threat of punishment for traffickers is no longer using the Criminal Code (KUHP) which is

considered by some to be unprotected because the threat is still too light, but now can use Law No. 21 of 2007, the threat to traffickers is very heavy. According to Law No. 21 of 2007 from the definition of the Act on criminal acts human trafficking and several UN Conventions relating to the trafficking of women and children, there are several forms of trafficking in persons, including:

1. Legal and illegal migrant labor;
2. Domestic workers (PRT);
3. Commercial sex/sexual exploitation workers (including pedophilia);
4. Adoption of fake children;
5. Ordered bride;
6. Beggars;
7. The industry of pornography, drug trafficking; and
8. Sale of organs.

Psychologically women trafficked victims will usually have deep trauma because of the series of events they experienced. Women become individuals who are full of feelings of terror and fear. Trafficking victims usually experience the following:

1. Memorable memories such as shadows or memories of the trauma;
2. Feeling like a criminal happens again and again (flashback);

3. As disturbed if reminded, or remembered about the trauma (by something he saw, heard, felt, kissed or felt on the skin, or on the tongue);
4. Fear, feeling back in danger;
5. Difficulty controlling emotions or feelings because of memories of trauma that are not able to be controlled (Muflichah and Bintoro, 2009: 132).

LEGAL POLICY FOR HUMAN TRAFFICKING

The formulation policy by making new rules/criminalization on elements of the crime of human trafficking shows that there is a detailed arrangement of prohibited acts. Whereas the consequence which is an absolute requirement of TPPO is the mode in TPPO also explained more clearly, from the crime of trafficking in persons. The results of criminalization in Law Number 21 of 2007 concerning the Eradication of Crime in Trafficking in Persons can be seen from the expansion of the subject of criminal acts of trafficking, as seen in the formulation of Article 1 number 4, namely perpetrators not only as individuals (natural person), but also company or *rechtspersoon* (Nuraeny, 2013: 290).

Based on criminal law policy, this effort is the result of the formulation of legal / legal policies that are oriented towards the future, as anticipation as a manifestation of prevention efforts which constitute criminal law reform in criminal trafficking / criminalization.

Substantially the material of regulation of TPPO in Law Number 21 of 2007 is in line with the expectations of the community in the enforcement of criminal law on trafficking in persons. However, in supporting the implementation of TPPO prevention and law enforcement in general, it is not enough to rely solely on Law Number 21 of 2007 concerning the Eradication of Criminal Trafficking in Persons, but needs to be supported by other laws and regulations, given the nature and scope of criminal acts trafficking in persons that is very complex and applies can cross national borders, so prevention and law enforcement cannot only be carried out by simply using Law Number 21 of 2007 concerning the Eradication of Crime in Trafficking in Persons, but requiring assistance from the substance of other legal branches (legal substance) (Nuraeny, 2013: 291).

Law Number 21 of 2007 concerning Eradication of Criminal Acts of Human

Trafficking which is a government effort in providing legal protection, both directly and indirectly to potential victims and/or victims, also related to Law Number 13 of 2006 concerning Protection of Witnesses and victim. Therefore, to carry out prevention and law enforcement, the purpose of which is to protect human rights can be done starting with identifying the causes of TPPO. Law No. 13 of 2006 is a positive step in efforts to protect witnesses and victims, which have been regulated sectorally. This Law Number 21 of 2007 is an advance towards the protection of victims, in accordance with the mandate of the opening of the 1945 Constitution, namely protecting all Indonesian people and the entire bloodshed of Indonesia (Nuraeny, 2013: 292).

Operational policies are very important to be criticized because the implementation of efforts to eradicate human trafficking will be carried out based on these regulations. For example, as mandated by Article 46 paragraph 1 and 2 of the PTPPO Act, the Indonesian government established Government Regulation Number 9 of 2008 concerning Integrated Service Procedures and Mechanisms for Witnesses and/or Victims

of Human Trafficking, which will be developed in each district/city for witnesses and / or victims of trafficking in persons. This Government Regulation then mandates a Ministerial Regulation concerning Minimum Service Standards and Standard Operating Procedures concerning repatriation and integration. Thus, the vertical synergy between the regulations mentioned above becomes very important in efforts to eradicate and prevent trafficking in persons (Hidayati, 2012: 172).

In the context of regional autonomy and decentralization, the main implementation of the eradication of trafficking in persons is related to the regional government. This is also regulated in the PTPPO Act, Chapter VI concerning Prevention and Management where "The Government and Regional Governments are obliged to make policies, programs, activities and allocate budgets to carry out prevention and handling of trafficking in persons" (Article 57 of Law No. 21 of 2007).

Often the Law which is passionately on the right track, even though it is still far from perfect, in the political development in Indonesia especially since the process of decentralization and regional government

has taken place has actually experienced a very unfavorable turning point for victims. Facts often show that the power of law established by international legal instruments and national law is weakened by local (regional) legal instruments relating to programs or actions carried out by regional governments. Until now, the Regional Regulations on the Elimination of Trafficking of Women and Children have been established, including West Java, East Java, North Sumatra, Riau-Riau Islands, South Sulawesi (Hidayati, 2012: 172).

At present, Law Number 21 of 2007 has been completed with implementing regulations, namely:

- a. Government Regulation Number 9 of 2008 concerning Procedures and Integrated Service Mechanisms for Witnesses and / or Victims of Crime in Trafficking in Persons
- b. Presidential Regulation Number 69 of 2008 concerning Task Force for the Prevention and Handling of Crime in Trafficking in Persons (Adams, 2013: 7).

Various other laws and regulations relating to eradicating trafficking crimes are as follows:

- a. Law Number 23 of 2002 concerning Child Protection
- b. Law Number 39 of 1999 concerning Human Rights
- c. Law Number 39 of 2004 concerning Placement and Protection of Indonesian Workers Abroad
- d. Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime (United Nations Convention Against Transnational Organized Crime)
- e. Law No. 15 of 2009 concerning Ratification of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (Protocol against the Migration of Migrants by Land, Sea and Air, Completing the United Nations Convention Against Organized Transnational Crime)
- f. Law No. 14 of 2009 concerning Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime

(Protocol to Prevent, Act and Punish Trafficking in Persons, Especially Women and Children) children, complementing the United Nations Convention Against Transnational Organized Crime)

- g. Presidential Regulation Number 23 of 2011 concerning the Indonesian National Action Plan for Human Rights (RAN-HAM) in 2011-2014 (Adams, 2013: 8).

All legal aspects that already exist in the territory of the Republic of Indonesia must be implemented by all law enforcers appropriately, quickly and professionally. In addition to its own legal aspects the community must be given information on the implementation of these legal instruments. So that public awareness in law enforcement efforts related to trafficking in persons can be prevented.

IMPLEMENTATION OF LEGAL POLICIES FOR PREVENTING HUMAN TRAFFICKING

The stage of the application of criminal law by law enforcement officials is starting from the police, prosecutors and courts. This stage is also called the judicial

stage. Application policy/judiciary is inseparable from the criminal justice system (criminal justice system), which is a community effort in overcoming crime / crime. Application / judicial policies relate to law enforcement processes and the operation of law in society. Therefore, in realizing criminal justice system, law enforcement officers (police, prosecutors and judges) must be able to coordinate well in carrying out their duties, in harmony and authority, or must refer to the management of criminal justice systems (Nuraeny, 2011: 298).

In the regulation of criminal law in Indonesia, the crime of trafficking in persons was initially regulated in Article 297 of the Criminal Code. In Article 297 of the Criminal Law, acts that are prohibited are the trafficking of women and men. Whereas the prohibition regulation for committing criminal trafficking in persons in Law Number 21 of 2007 concerning the eradication of the Crime of Trafficking in Persons, is regulated in article 2. If Article 297 of the Criminal Code is compared to Article 2 of Act Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, it is clear that the two articles differ in the scope and imposition of

criminal sanctions.

Implementation of prevention in the form of socialization is limited and not comprehensive, yet it has not touched disadvantaged and remote villages. Similarly, it has not involved small people in the countryside (Riadi, 2017: 12). This prevention of trafficking in persons from the small community is neglected because of the lack of understanding of trafficking in persons. It would be better in its implementation to involve village officials as a whole to participate in socializing to the community.

In implementing law enforcement it is still far from expectations. This can be seen from police data which shows that handling cases of trafficking in persons is small compared to the case itself. Meanwhile, law enforcement against persons is almost never heard of sanctions. Likewise, the quality of law enforcement is very insignificant, where there has never been an optimal sanction according to the rules, including for traffickers who have made victims to death, who should have been sentenced to more than 15 or 20 years and fined more than 2 billion the light sentence he imposed, on average 3-4 years the heaviest is only 8 years (Riadi, 2017: 12).

Basically the forms or models of protection against victims of crime can be given to victims of trafficking in persons, to be able to explore the forms or models of legal protection that can be given to victims, namely as follows:

1. Giving Restitution and Compensation
2. Counseling Services and Medical Services / Assistance
3. Legal Aid
4. Giving Information (Mansur and Gultom, 2007: 166).

THE PREVENTIVE ACTION PROLICIES TO HUMAN TRAFFICKING CRIMES IN THE PERSPECTIVE OF HUMAN RIGHTS AND ISLAMIC LAW

Human rights are natural rights and gifts from God and therefore the struggle to uphold human rights is a sacred duty and gift to humans. Human rights enforcement is always related to the politics of human rights law, which includes prevention, countermeasures and justice against perpetrators of human rights violations. Management of human rights law can be initiated from prevention of human rights violations which are a

social phenomenon.

Social symptoms in the community can take various forms and backgrounds. One of the social symptoms in the form of violations of human rights law is trafficking in persons. Therefore prevention of trafficking in persons (TPPOs) must be based on human rights law, whose purpose is to create order, justice and social welfare. The effort to prevent TPPO is a social strategy, because it requires criminal policy, whose purpose is to reduce crime and fulfill the sense of justice of the community.

Referring to the development law theory from Mochtar Kusumaatmadja, Indonesian legal political policies must refer to the concept of law as a means of development, therefore the applicable legal concept must be explained in order and order, and the ultimate goal is justice. To make all that happen, certainty is needed. Without the certainty of law and order of society, human beings cannot develop and defend the rights bestowed by God, namely human rights. In reality the rule of law is different from other social rules, where the rule of law can be enforced on a regular basis. This means that coercion is used to ensure the structuring of legal regulations, such as forms, methods and

implementation tools (Kusumaatmadja, 2006: 3-4).

To be able to prevent criminal acts of trafficking in persons, it can be started from improving the legal system, both the substance, structure and culture of the legal community, and ending with the law enforcement process. Law enforcement in essence contains the supremacy of substantial value, namely in the form of justice, where philosophical justice is the purpose and function of law formation. Therefore in enforcing the law there is a need to exercise the law, because the law always involves people and their behavior (Nuraeny, 2011: 152).

In the view of Islamic law, slavery is also prohibited. One of the missionary mission when Islam came was to eradicate slavery on earth. Islam offers a solution to the problem of slavery, namely by entering slaves (*riqab*) and people who are in debt as the parties entitled to receive zakat. The majority of victims of trafficking in persons are those who originally came from poor families and were in low economic class. So that victims of human trafficking are basically entitled to get zakat (Widiastuti, 2010: 114).

The Islamic view above needs to be transformed to deal with the problem of

criminal trafficking in persons practically. Although it is not in the sense of giving zakat directly to victims of human trafficking, it is certain that this solution can be useful for eradicating criminal trafficking in persons in general. The solution in question is the functioning of zakat as a support in funding programs to eradicate criminal trafficking in persons (Widiastuti, 2010: 114).

Nahdatul Ulama (NU) once issued a fatwa concerning the crime of trafficking in persons at the National Ulama Conference held by the NU Executive Board in Surabaya on 28-31 July 2006. There were two fatwas on this issue issued by the PBNU namely, first, prohibiting exploitation during the process of recruiting, transporting, sheltering, sending, transferring or receiving someone with threats, the use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable positions, debt bondage or paying or benefits so as to obtain approval from people in control of people that, whether done within the state or between countries. Second is obliging every party, government, religious leaders and the community to prevent criminal acts of trafficking and protecting. The NU fatwa is strategic because it is

accompanied by recommendations from the PBNU and all autonomous bodies and institutions from the center to the regions that expressly declare a joint movement to reject trafficking (Widiastuti, 2010: 114).

CONCLUSION

The rise of trafficking in Indonesia, where this crime is a type of crime committed by associates who have been organized which covers national to international. This type of crime is a violation of human rights, namely the rights inherent in every human being include naturally, including the right to life, family rights, self-development rights, justice rights, freedom of rights, communication rights, security rights, and welfare which therefore may not be ignored or seized by anyone. So to eradicate crime it is necessary to prevent human trafficking so that trafficking in persons such as the sale of children, child prostitution, people smuggling, migrants and discrimination and trafficking in women and prostitution.

The Indonesian government has ratified Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The ratification of

the PTPPO Law is part of the hope of a desire to change the circumstances of the majority of men and women trafficked for the purpose of sexual exploitation and forced labor. The difficult economic situation and lack of access to education and culture that provide opportunities for trafficking in persons are the main causes of these trafficking actions which can be overcome through specific policies or legal rules. This policy was welcomed by several regions in the form of regional regulations such as in the provinces of South Sulawesi, North Sulawesi, North Sumatra, West Kalimantan, Riau Islands, Lampung, East Java, West Java and East Nusa Tenggara. However, Indonesia still cannot be said to be free from the problem of trafficking in persons.

The implementation of prevention of trafficking in the form of law enforcement is not yet optimistic, such as there are still few traffickers who are caught, and the lack of unscrupulous officers who have been arrested, as well as criminal decisions against perpetrators who do not have a deterrent effect on perpetrators and society. This is caused by the presence of officers who play and there are still differences in perceptions between law enforcers (police, prosecutors and judges)

related to the provisions of the law that must be applied, where there are still officials in the area who still use the Criminal Code and not the trafficking law.

The criminal law policy in dealing with trafficking in persons at this time has been quite good with the existence of Law No. 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons, where the trafficking law is progressing because the criminal threat for traffickers adheres to a minimum criminal and the victim is also entitled to compensation and restitution and compensation from the perpetrator. This law also provides an opportunity for government efforts to provide protection for victims, witnesses and reporters. Besides that, it is also known as a weighting sentence in cases of trafficking in persons as known in Indonesian criminal law. As well as policies on criminal law in dealing with criminal acts of trafficking such as formulation policies, application policies and execution policies must be carried out properly and correctly in order to be a criminal act.

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